

1-0400-9052-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF AGRICULTURE

In the Matter of Claims Against the
Grain Buyer's Bond No. MTC 182,
Michael Wayne Juhl d/b/a Delta
Commodities of Roseau, principal,
Minnesota Trust Company, surety.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck on Monday, September 19, 1994, at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, in the city of Minneapolis, Minnesota.

Paul A. Strandberg, Assistant Attorney General, 520 Lafayette Road, Suite 200, St. Paul, Minnesota 55155, appeared on behalf of the Department of Agriculture. Mr. James Gryniewski, Director, Grain Licensing and Auditing Division of the Department of Agriculture, 316 Grain Exchange Building, Minneapolis, Minnesota 55415, was also in attendance. Mr. Warren F. Plunkett, Esq., Vice President, Minnesota Trust Company, and Mr. Peter Plunkett, Esq., President, Minnesota Trust Company, 107 West Oakland Avenue, Austin, Minnesota 55912, appeared on behalf of Minnesota Trust Company. Mr. Michael Wayne Juhl, Mr. Richard Johnson, and Mrs. Ray Vatnsdal appeared on their own behalf.

The record in this matter closed on September 19, 1994, the date of the hearing. There was no request to file a written memorandum by any party.

This Report is a recommendation, not a final decision. The Commissioner of Agriculture will make the final decision after a review of the record, and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained in this recommended decision. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until

this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and to present argument to the Commissioner. Parties should contact Elton Redalen, Commissioner, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55103 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether the Claimants, Dennis Kofstad, Buddy Farms, Inc., Richard L. Johnson, Jonathan Grahn, Mrs. Vatnsdal d/b/a RDR Farms, Kreg Hovorka, and Red River Grain, are entitled to recover against the grain buyer's bond written by Minnesota Trust Company for Michael Wayne Juhl d/b/a Delta Commodities of Roseau.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Michael Wayne Juhl, d/b/a Delta Commodities of Roseau, was licensed by the Department of Agriculture to buy grain from March 23, 1990 until December 16, 1993, the day his license was suspended. This time period included a portion of the license year beginning July 1, 1993. Mr. Juhl submitted with his application for a license, a grain buyer's bond written by Minnesota Trust Company in the amount of \$50,000, which covers cash sale transactions of the grain buyer. (Ex. 1.)

2. The grain buyer's bond was issued effective July 1, 1992, and states it is continuous and remains in effect until cancelled. The bond was in effect during the license year beginning July 1, 1993, and in effect during the time of the transactions in question. The claims are for transactions that occurred since July 1, 1993. The bond states that it is a statutory bond and is given pursuant to the provision of Minn. Stat. § 223.17 (1988), and is governed by the laws of the state of Minnesota. (Ex. 1.)

3. During 1993, the wheat and barley crops in northern Minnesota were stressed due to the presence of vomitoxin. The result was that test weights were abnormal and buyers could not pay for the crops when they were picked up from the producer. Mr. Juhl would deliver the grain to an elevator where it would be graded and then Mr. Juhl was to immediately pay the grower.

4. Dennis Kofstad made the following sales of spring wheat to Michael Juhl:

949.28 bushels of wheat at \$2,563.06 on October 21, 1993.
875.38 bushels of wheat at \$2,188.45 on October 29, 1993.

These two sales totaled \$4,751.51. None of that amount has been paid to Mr. Kofstad. The grain was sold to Mr. Juhl on a cash sale basis or cash versus documents, which means that payment would be made when the elevator documents were completed.

5. Mr. Kofstad filed written proof of claim with the Department of Agriculture on March 7, 1994. The proof included copies of scale tickets, bills of lading, settlement sheet, and a notarized Proof of Claim. (Ex. 2.

6. Buddy Farms, Inc., made the following sales of Canola seed to Mr. Juhl:

44,856 pounds of seed at \$0.095 per net pound on October 25, 1993, valued \$4,261.32.

The documentation indicates that this sale was contracted for on April 5, 1993. Buddy Farms sold the contents of four trucks to Mr. Juhl. The seed was to be shipped from Buddy Farms in October or November of 1993. The value of the seed was to be based on \$0.095 per net pound of delivered weight. The pounds were to be based on the grade applied to the Canola when it was delivered to a buyer found by Mr. Juhl. Payment was to be made when the net pound figure was received by Mr. Juhl. (Ex. 2.)

7. The sale was effected when the seed was delivered to CanAmera Foods, Altona, Manitoba, Canada, by Mr. Juhl on October 25, 1993. The value of the seed was \$4,261.32. (Ex. 2.)

8. Buddy Farms, Inc. filed a written proof of claim with the Department of Agriculture on March 2, 1994. The proof included a notarized Proof of Claim, correspondence between the claimant and the Grain Licensing and Auditing Division, Department of Agriculture, a purchase contract, scale ticket, bill of lading and settlement sheet. (Ex. 2.)

9. Richard L. Johnson sold 208,854.58 pounds of Canola seed to Mr. Juhl in October of 1993. The sales were as follows:

52,357.14 pounds at \$0.088 per net pound on October 14, 1993.
54,438.34 pounds at \$0.088 per net pound on October 14, 1993.
50,045.60 pounds at \$0.088 per net pound on October 19, 1993.
52,013.50 pounds at \$0.088 per net pound on October 25, 1993.

Total value of these sales is \$18,379.20. Payment for the seed was to be made in the same manner as the Buddy Farms transaction. Mr. Johnson requested an advance payment on the seed, and Mr. Juhl agreed. There were no written documents relating to the advance payment. The advance payment was made to Mr. Johnson in the amount of \$5,596.89. (Ex. 2.)

10. The payment to Mr. Johnson was to be in cash, once Mr. Juhl received documents from the grain elevator indicating the weight of the seed. The payment could not be determined until the seed was weighed.

11. After the grain was picked up, Mr. Johnson expected to be paid once Mr. Juhl received sales documents verifying the weight of the seed. He stopped at the Delta Commodities office in October of 1993 to see if the proceeds documents had come in and found that the office was closed, and that Delta Commodities of Roseau was out of business.

12. Mr. Johnson did not realize he was not going to be paid by Mr. Jul until he saw the closed office. It was only a matter of a week between when expected to be paid and when Delta Commodities filed for bankruptcy.

13. On November 30, 1993, Mr. Johnson filed a written claim with the Department against the grain buyer's bond of Delta Commodities of Roseau with the Department of Agriculture. The proof included copies of a notarized Proof of Claim, scale tickets, and bills of lading.

14. Mr. Johnson did not enter into a written contract with Mr. Juhl for a extension if credit.

15. Grahn Farms (Jonathan Grahn) sold four loads of barley, totalling 4,698.01 bushels, to Mr. Juhl. Fees of \$73.50 and dockage of \$2,085.80 were taken from the total value of \$6,812.12. Grahn Farms received check number 20318 for the balance due, \$4,652.82. The check was returned unpaid after processing by the bank. The following sales were included:

1,220.51 bushels at \$1.45 in the amount of \$1,769.74.
1,047.29 bushels at \$1.45, in the amount of \$1,518.57.
1,357.50 bushels at \$1.45 in the amount of \$1,968.38.
1,072.71 bushels at \$1.45, in the amount of \$1,555.43.

16. Proof of the claims for Grahn Farms was filed with the Department of Agriculture on January 3, 1994. The proof included a notarized Proof of Claim and an annotated settlement sheet. (Ex. 2.)

17. Mrs. Ray Vatnsdal, d/b/a RDR Farms, sold four loads of wheat to Mr. Juhl, totalling 3,499.38 bushels. They were delivered to Mahnommen Farmers Cooperative Grain Association, Callaway, Minnesota, for the account of Delta Commodities. The loads were priced as follows:

986.56 bushels at \$3.25/bushel, in the amount of \$3,206.32.
909.86 bushels at \$3.25/bushel, in the amount of \$2,957.05.
824.84 bushels at \$3.40/bushel, in the amount of \$2,804.46.
778.12 bushels at \$3.40/bushel, in the amount of \$2,645.61.

The total value of these loads was \$11,613.44. Commodity Credit Corporation (CCC) was paid \$3,734.16 from proceeds from this transaction, which was credited against a loan owed to CCC by RDR Farms. The balance, \$7,879.28, remains owing to RDR Farms. When Mrs. Vatnsdal found out about Delta Commodities going into bankruptcy, she asked that the elevator pay direct on note due to CCC. (Ex. 2.)

18. Mr. Juhl normally picked up the grain from RDR Farms, the elevator weighed it, and RDR Farms would get paid as soon as documents verifying its weight arrived at Delta Commodities' office.

19. A proof of claim, including copies of scale tickets, bills of lading, correspondence between the claimant and the Grain Licensing and Auditing Division, Department of Agriculture, and a copy of a check to CCC was received from Mrs. Vatnsdal by the Department of Agriculture on February 2, 1994. (Ex. 2.)

20. Kreg Hovorka sold one load of wheat to Mr. Juhl on October 29, 1993. The grain sold amounted to 946.88 bushels of spring wheat. The wheat was

priced at \$2.60 per bushel, \$9.00 was deducted for inspection and weighing fees, and \$50.00 was deducted for use of a vaculator. Total value was \$2,461.89, which less the deductions was \$2,402.89, none of which was paid to Mr. Hovorka.

21. Mr. Hovorka's written proof of claim, filed with the Department of Agriculture on February 28, 1994, included a notarized Proof of Claim,

correspondence between claimant and the Grain Licensing and Auditing Division, Department of Agriculture, a settlement sheet, and a scale ticket. (Ex. 2.)

22. Red River Grain, whose owner is Clyde Fering, sold one load of corn to Mr. Juhl which has not been paid for. The corn was loaded out on August 1993. Payment was demanded then and via monthly billings. The amount was as follows:

1,106.43 bushels at \$2.00 per bushel, value \$2,212.86, plus service charges of \$101.08, total claim, \$2,313.94.

23. Mr. Fering's written proof of claim was filed with the Department of Agriculture on March 16, 1993. The proof included a notarized Proof of Claim, an invoice, scale ticket, bankruptcy court correspondence, and correspondence between claimant and the Department of Agriculture, Grain Licensing and Auditing Division. (Ex. 2.)

24. None of the claimants entered into a valid written contract for an extension of credit with Michael Wayne Juhl doing business as Delta Commodities of Roseau. The fact that some of the claimants waited a few days in expectation of full payment was due to grain grading practices, that is, the claimants were forced to wait until Michael Juhl received a grade from the elevator to which he delivered the grain. The claimants believed that they would receive payment when the grades were returned to Mr. Juhl.

25. Since obtaining a bond from the surety, Mr. Juhl incorporated his business, sometime during 1993. However, his customers were not aware of this nor did it affect their business transactions. His company is now in bankruptcy.

26. By letter dated May 3, 1994, the Minnesota Department of Agriculture notified Minnesota Trust Company that the department had received the seven claims discussed above (Ex. 2), that it found the claims to be valid, and directed the surety company to pay the claimants the amounts set out above. (Ex. 2.) The surety appealed this determination and requested a contested claim hearing by a letter received by the Attorney General on May 16, 1994.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Commissioner of Agriculture and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 223.17 subds. 7 and 8.

2. That the Department of Agriculture has fulfilled all relevant substantive and procedural requirements of law or rule.

3. That the Department of Agriculture has given proper notice of the hearing in this matter.

4. That the Department has the burden of proof in this contested case proceeding.

5. Minn. Stat. § 223.17, subd. 4, states, in part, that:

Before a grain buyer's license is issued, the applicant for the buyer's license must file with the Commissioner a bond in a penal sum prescribed by the Commissioner . . .

6. Minn. Stat. § 223.17, subd. 7, provides, in part, that:

A producer claiming to be damaged by a breach of a contract for the purchase of grain by a licensed grain buyer may file a written claim with the Commissioner. The claim must state the facts constituting the claim. The claim must be filed with the Commissioner within 180 days of the breach of the contract.

7. Minn. Stat. § 223.17, subd. 8(a), provides, in part, that:

The bond required under subdivision 4 shall provide for payment of loss caused by the grain buyer's failure to pay, upon the owner's demand, the purchase price of grain sold to the grain buyer in the manner provided by subdivision 5, including loss caused by failure to pay within the time required.

8. Minn. Stat. § 223.17, subd. 8(b), provides, in part, that:

The Commissioner shall promptly determine the validity of all claims filed and notify the claimants of the determination. An aggrieved party may appeal the commissioner's determination by requesting, within 15 days, that the commissioner initiate a contested case proceeding. In the absence of such a request, or following the issuance of a final order in a contested case, the surety company shall issue payment promptly to those claimants entitled to payment.

9. Minn. Stat. § 223.17, subd. 5, provides, as follows:

For a cash sale of a shipment of grain which is part of a multiple shipment sale, the grain buyer shall tender payment to the seller in cash or by check not later than ten days after the sale of that shipment, except that when the entire sale is completed, payment shall be tendered not later than the close of business on the next day, or within 48 hours, whichever is later. For other cash sales the grain buyer, before the close of business on the next business day after the sale, shall tender payment to the seller in cash or by check, or shall wire or mail funds to the seller's account in the amount of at least 80 percent of the value of the grain at the time of delivery.

The grain buyer shall complete final settlement as rapidly as possible through ordinary diligence. Any transaction which is not a cash sale in compliance with the provisions of this subdivision constitutes a voluntary extension of credit which is not afforded protection under the grain buyer's bond, and which must comply with sections 223.175 and 223.177.

10. Minn. Stat. § 223.16, subd. 16, defines "voluntary extension of credit contract" as:

A contract for the purchase of a specific amount of grain from a producer in which the title to the grain passes to the grain buyer upon delivery, but the price is to be determined or payment for the grain is to be made at a date later than the date of delivery of the grain to the grain buyer. Voluntary extension of credit contracts include deferred or delayed payment contracts, unpriced sales, no price established contracts, average pricing contracts, and all other contractual arrangements with the exception of cash sales and grain storage agreements evidenced by a grain warehouse receipt.

11. Minn. Stat. § 223.175 provides as follows:

A written confirmation required under section 223.177, subdivision 2, and a written voluntary extension of credit contract must include those items prescribed by the commissioner by rule. A contract shall include a statement of the legal and financial responsibilities of grain buyers and sellers established in this chapter. A contract shall also include the following statement in not less than ten point, all capital type, framed in a box with space provided for the seller's signature: "THIS CONTRACT CONSTITUTES A VOLUNTARY EXTENSION OF CREDIT. THIS CONTRACT IS NOT COVERED BY ANY GRAIN BUYER'S BOND." If a written contract is provided at the time the grain is delivered to the grain buyer, the seller shall sign the contract in the space provided beneath the statement.

12. Minn. Stat. § 223.177, subd. 2, provides as follows:

Any grain buyer entering into a voluntary extension of credit contract orally or by phone shall give or mail to the seller a written confirmation conforming to the requirements of section 223.175 before the close of the next business day.

13. Mr. Juhl never provided any claimant with written confirmation of voluntary extension of credit contract.

14. Each of the claimants in this proceeding engaged in a cash sale with Mr. Michael Wayne Juhl, doing business as Delta Commodities of Roseau, and did not grant Mr. Juhl a voluntary extension of credit, nor enter into a valid contract for a voluntary extension of credit.

15. That by statements made to each claimant, Mr. Juhl led them to believe that they would eventually be paid in full.

16. That the breach of the contract between the claimants and Mr. Juhl d/b/a Delta Commodities of Roseau, for the purchase of grain occurred on October 19, 1993, within the meaning of Minn. Stat. § 223.17, subd. 7, and Re Grain Buyer's Bond of Thomas D. French, 486 N.W.2d 466, 470 (Minn. Ct. App. 1992).

17. That the claimants did not know of the breach until Delta Commodities Roseau was unable to pay for grain received on or around October 17, 1993.

18. That all claims were timely filed within 180 days under Minn. Stat. 223.17, subd. 7.

19. That the above Conclusions are arrived at for the reasons set in the Memorandum which follows and which is incorporated into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Agriculture issue an Order directing Minnesota Trust Company to pay to the Department of Agriculture the following:

1. For the benefit of Claimant Dennis Kofstad, the sum of \$4,751.51.
2. For the benefit of Claimant Buddy Farms, Inc., the sum of \$4,261.51.
3. For the benefit of Claimant Richard L. Johnson, the sum of \$12,782.31.
4. For the benefit of Claimant Jonathan Grahm, the sum of \$4,652.82.
5. For the benefit of Claimant Mrs. Ray Vatnsdal, d/b/a RDR Farms, the sum of \$7,879.28.
6. For the benefit of Claimant Kreg Hovorka, the sum of \$2,402.89.
7. For the benefit of Claimant Red River Grain, the sum of \$2,212.86.

Dated this 6th day of October, 1994.

_____/s/
GEORGE A. BECK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to send its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped. Tape No. 21,689. No transcript prepared.

MEMORANDUM

The main question to be resolved in this contested case proceeding is whether the grain transactions were cash sales or voluntary extension of credit contracts. If cash sales, they are covered under the bond purchased by Michael Wayne Juhl, d/b/a Delta Commodities of Roseau, from Minnesota Trust Company. If they are voluntary extensions of credit contracts as the Surety argued in its appeal notice, they are not covered.

The statute provides that in the case of a cash sale, when the entire sale is completed, payment must be tendered not later than the close of business the next day, or within 48 hours of the finalization of the transaction, whichever is later. The Surety argues that since payment was not made within the 48-hour time period specified in the statute, these transactions are voluntary extensions of credit contracts.

The statute provides that if a grain buyer enters into a voluntary extension of credit, orally or by telephone, the buyer must then mail to the seller written confirmation of the contract within the next business day after the transaction. Minn. Stat. § 223.177, subd. 2. In Re Grain Buyer's Bond French, supra, held that Minn. Stat. § 223.177, subd. 3, implies that any written contract which does not comply with the statute is non-qualifying, and that "all non-qualifying contracts, even if the seller offers credit, are to be treated as cash sales." 486 N.W.2d at 469.

Michael Juhl and the Claimants who appeared testified that these transactions were cash sales. Mr. Juhl testified that he fully intended to pay all claimants, but that he did not have sufficient funds to do so. He described all the transactions as cash sales. He told each buyer when he picked up the grain that they would be paid upon receipt from the ultimate purchaser of the documents of grade. He was unable to pay at the time of pickup due to the stress caused by vomitoxin that year which produced the abnormal test weights. Witness Richard Johnson testified that he understood that he would be paid when Mr. Juhl got paid by the elevator and that these were cash sales. Witness Mrs. Ray Vatnsdal testified that Mr. Juhl would pick up the grain, they would wait until the elevator determined the weight, and then her farm was to be paid; that as soon as the documents arrived, the money was due.

The Department also concluded that cash sales were involved. There was no evidence submitted that Mr. Juhl or Delta Commodities of Roseau sent to any claimant written confirmation of any contract within the 48-hour time frame or at any other time. Neither was there any evidence that a written contract which complied with the statute, such as a deferred payment contract, was ever entered into by Mr. Juhl and any claimant. The statute contains specific

requirements for such a contract such as a notice in capital letters that the contract is not covered by any grain buyer's bond.

Mr. Gryniowski stated that one proof of claim mailed to the department included a written contract, but it did not include the specific language required by Minn. Stat. § 223.175 which would make it a valid voluntary extension of credit contract. It was therefore not a voluntary extension of credit contract, but a cash sale, as defined under the statute and In Re Grain

Buiyer's Bond of French, supra. No evidence was presented or offered to show that these transactions were not cash sales, as defined under the statute. It is, therefore, determined that the sales between the claimants and Michael Wayne Juhl, d/b/a Delta Commodities of Roseau, were all cash sales, and are covered under the bond. The Surety company is obligated to pay the claimants' losses.

The Surety company argued that, since not all of claimants were in attendance, their proof of claim, submitted as Exhibit 2, is hearsay, and cannot be admitted into evidence; that therefore no proof of claim against the bond is in evidence, and therefore the claims of those not in attendance must fail.

Minn. Rule 1400.7300, subp. 1, states, in part:

The judge may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. . . . Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

The written documents submitted by the non-appearing claimants are reliable hearsay since they are documents employed in the ordinary course of business, they were verified and accepted by the Department, and they were corroborated by the testimony of the claimants who did appear. Additionally, it has been held that a written report may be accepted into evidence, and is substantial evidence, when the opposing party has not exercised its right to subpoena the custodian of the report, and thereby cross-examine the custodian. Richardson v. Perales, 402 U.S. 389 (1971). The company had the opportunity to subpoena all claimants, in order to examine them about these documents, but chose to subpoena no one. The company could have submitted evidence showing these claims were incorrect, improperly submitted to the department, or were in some way false; it did not.

The Surety argued at the hearing that because Mr. Juhl incorporated his business during 1993, it was no longer covered by the bond which was issued to Michael Wayne Juhl, d/b/a Delta Commodities of Roseau. However, Mr. Juhl continued to be the principal of the business and the name did not change except to add an "Inc." The bond continued until cancelled. No one cancelled the bond prior to the claims being presented. There is no requirement that a grain buyer must tell a bond carrier that he has incorporated. The nature of the business and personnel involved in the business remained the same. The Surety did not demonstrate any prejudice to it because of the incorporation nor offer any authority for the argument that it was not required to pay on the bond because Mr. Juhl incorporated.

GAB